

227.7203-11

produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) *Unmarked computer software or computer software documentation.* (1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause at 252.227-7014; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Govern-

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ment with restrictions on further use or disclosure.

[60 FR 33482, June 28, 1995, as amended at 63 FR 55052, Oct. 14, 1998]

227.7203-11 Contractor procedures and records.

(a) The clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227-7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

227.7203-12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227-7014 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227-7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227-7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed